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To: LondonPol; Ried, Curtis R (London)
Subject: White House on past, present, and future use of waterboarding

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Q General Hayden confirmed yesterday that the CIA subjected three terrorist suspects to waterboarding, and you talked a little bit about that this morning. Would you tell us if there were other instances where interrogators used that technique?

MR. FRATTO: I think General Hayden in his testimony yesterday limited it to the three terrorist suspects that he mentioned.

Q So that is all that -- those are the only three?

MR. FRATTO: To my knowledge, and according to the testimony in front of Congress of General Hayden, that's as I understand it.

Q And how many times with each of those suspects?

MR. FRATTO: I'd have to refer you to the CIA for questions on operations and how they conduct them.

Q But you're not saying it was just once for each of the detainees?

MR. FRATTO: I am not saying anything in terms of how the interrogation was handled specifically with specific detainees. For those kinds of questions, the best place to go is to the Central Intelligence Agency, since they operate the program.

Q And earlier you suggested that it would not be ruled out for possible use in the future?

MR. FRATTO: Again, I think I'd refer you to the testimony yesterday where the intelligence chiefs didn't rule anything out. What I did talk about was the process whereby the administration would consider any enhanced interrogation techniques. And that process includes the Director of the Central Intelligence Agency bringing a proposal to the Attorney General, where a review would be conducted to determine if the plan would be legal and effective. At that point, the proposal would go to the President, the President would listen to the determinations of his advisors, and make a decision.

If he made a decision to authorize a specific interrogation technique, part of that process also involves going to the House and Senate Intelligence Committees, and the Chairmen and ranking members of the Judiciary Committees, and to inform them that a change in the program has taken place.

Q But the fact the process exists suggests that it could be used again; you're not ruling it out.

MR. FRATTO: I'm not speculating at all on what circumstances in the future would cause the Director of the CIA to make a proposal in that way. That's something for Director Hayden to address.

What we do know is that they are taking -- they take this, the interrogation program, very seriously. They understand that it must be done with safeguards and under the rule of law. Every interrogation technique used in this program was brought to the Department of Justice, and Department of Justice made a determination as to its lawfulness, and that allowed the Central Intelligence Agency to move forward with their program. Any change would follow the process that I just outlined.

Q But does the administration maintain that waterboarding is not torture, or that any method of interrogation

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that it uses is not torture?

MR. FRATTO: Yes, torture is illegal. We don't torture -- we maintain and as we have said many times that the programs have been reviewed, and the Department of Justice has determined them to be legal.

Q But the General, himself, said in a recent interview that he thinks it's probably torture, and he has said that we have used it.

MR. FRATTO: I don't think that's accurate.

Q Yes, well, he said it seemed like it would be to him.

MR. FRATTO: I'm sorry, to Director McConnell?

Q McConnell, sorry, not --

MR. FRATTO: In The New Yorker -- and I think Director McConnell in his testimony yesterday in a conversation with Senator Feinstein I think explained those comments, and explained how they were out of context.

Q General Mukasey has been -- in his confirmation hearing was so adamant about not talking about this, and all of a sudden yesterday and today the administration is willing to talk about it. Why is that?

MR. FRATTO: Well, I think it is unfortunate. The Attorney General, Mukasey, he made a commitment to the Senate Judiciary Committee to talk about the legality and his review of the current program. And so that's what he did. He conducted a thorough review. He looked at the legal memoranda, and how the program works, and what components of the program are currently authorized. That is what the Attorney General discussed in his testimony, and that's what he had committed to do.

What the Director of the Central Intelligence Agency did was talk about the specific use of an interrogation technique. And again, as a reminder, he also talked about the intelligence that was gathered from this program, the valuable intelligence that was actionable that allowed us to locate al Qaeda operatives, to locate their plans, and to greatly increase how much knowledge we had of how this organization works in ways that help us to prevent attacks and to find other leaders in the organization.

Q So is waterboarding currently authorized?

MR. FRATTO: No, it's not. It's not, and I think that was mentioned yesterday, and the Attorney General Mukasey last week also made clear it is not currently authorized in this program.

Mike.

Q But, Tony, if a big enough fish is captured, the President could authorize the intelligence community to waterboard based on the belief that there may be actionable intelligence there; is that accurate?

MR. FRATTO: What I have said is -- first, I'm not going to speculate on what the President may or may not do or on what proposal the Director of the CIA will bring to the Attorney General and to the President.

What I have said is that any change in the enhanced interrogation techniques that may be used will follow the process that I outlined, which includes a legal review and notification of Congress.

Q Just to clarify, so you're saying that it's not torture and you're saying it's effective -- then why is it not currently authorized, waterboarding?

MR. FRATTO: General Hayden addressed that, he talked about any technique that you use, you use it under certain circumstances. It was something that they felt at that time was necessary and they sought legal guidance

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to make sure that it was legal and that it was effective. What he has said is that the program has evolved and the knowledge of the enemy has evolved. And their knowledge of how to interrogate in effective ways has evolved also.

So they're the professionals, they determine what is effective and what gets the information that we need to keep the nation safe. So it is a decision that the agency made. I could refer you to them, to see if they can explain it further; but it was their decision, they're the professionals.

Q Tony, Senator Durbin, who has been talking about this on the floor says, look, this technique has been used since the Spanish Inquisition; for five centuries it's been known as torture, American prosecutors actually obtained convictions against Japanese after World War II because of what they did to American captives. What about it makes it not torture now? Is it just the circumstances?

MR. FRATTO: I don't think that's a question I can answer. But that is a question that the Department of Justice answered on behalf of the CIA when they reviewed the components of the program. So I don't -- I wouldn't purport to be an expert on the technique and how it's used and the legal backing, so I would refer you to DOJ on that. But they did go through a process of determining the legality of it.

Q So they have basically changed the definition of torture because of the requirements of U.S. --

MR. FRATTO: I don't think that's accurate, no.

Q -- of the moment?

MR. FRATTO: No, I don't think that's the case at all, and I don't think that's the way DOJ would explain it. I think they -- going back again to the Attorney General's testimony last week, what the Attorney General said was that any use of any enhanced interrogation technique depends on the circumstances: who is carrying out the interrogation; who the target of interrogation is; what the threat environment is; what is the information that you're attempting to seek.

These are all the kinds of things that factor into how they make a decision as to which technique is appropriate to use. And then there is a review in terms of the legality of it. And that has been reviewed a number of times by a number of different people at the Department of Justice, and it was a determination that they made that it was legal.

Q So it -- just one more. Senator Durbin has asked for an investigation. You don't think it's necessary?

MR. FRATTO: I leave that decision to the Department of Justice. I think they have carried out their review and they have spoken to the issue.